



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,409	07/18/2003	Angela Temple	14892-004001	4188
26231	7590	12/23/2005	EXAMINER	
FISH & RICHARDSON P.C. P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			AUGHENBAUGH, WALTER	
			ART UNIT	PAPER NUMBER
			1772	

DATE MAILED: 12/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/622,409

Applicant(s)

TEMPLE ET AL.

Examiner

Walter B. Aughenbaugh

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 17-22 is/are pending in the application.
- 4a) Of the above claim(s) 17-22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Acknowledgement of Applicant's Amendments***

1. The amendments made in claims 1-11 in the Amendment filed on October 3, 2005 (Amdt. A) have been received and considered by Examiner.
2. Applicant's cancellation of claims 12-16 in Amdt. A has been acknowledged by Examiner.

### ***WITHDRAWN OBJECTIONS***

3. The objection to claims 4 and 9-12 made of record in paragraph 2 of the previous Office Action mailed May 3, 2005 has been withdrawn due to Applicant's amendments in Amdt. A.

### ***WITHDRAWN REJECTIONS***

4. The 35 U.S.C. 112 rejection of claim 13 made of record in paragraph 4 of the previous Office Action mailed May 3, 2005 has been withdrawn due to Applicant's cancellation of claim 13 in Amdt. A.
5. The 35 U.S.C. 102 rejection of claims 12-15 made of record in paragraph 6 of the previous Office Action mailed May 3, 2005 has been withdrawn due to Applicant's cancellation of claims 12-15 in Amdt. A.
6. The 35 U.S.C. 103 rejection of claim 16 made of record in paragraph 8 of the previous Office Action mailed May 3, 2005 has been withdrawn due to Applicant's cancellation of claim 16 in Amdt. A.

### ***REPEATED REJECTIONS***

#### ***Claim Rejections - 35 USC § 102***

Art Unit: 1772

7. The 35 U.S.C. 102 rejection of claims 1-7 and 9 made of record in paragraph 6 of the previous Office Action mailed May 3, 2005 has been repeated for the reasons previously made of record and for the following reasons that address the amendments in claims 1-7 and 9 in Amdt.

A: Brown teaches that the wipe (wipe device, item 10, Fig. 1 and 7) comprises material (the material for either sheath 14 or 16, or the material of wiping sheet, item 26) forming one cavity with one opening configured to receive a finger (col. 2, lines 40-48 and Fig. 1, 7 and 8). The material of the wipe device of Brown is shaped, with a finger inserted therein, to fit in a region of an eye near its tear duct because the tip of a finger is shaped to fit in a region of an eye near its tear duct, and the tip of either end of the wipe device of Brown is shaped similarly to the tip of a finger (see Fig. 7 and 8), so the tip of either end of the wipe device of Brown is shaped to fit in a region of an eye near its tear duct. Since the material is a component of the wipe device of Brown, the material is adapted to remove biological matter released from the eye at a position at or near the tear duct. Note that has been held that the recitation that an element is “adapted to” perform a function is not a positive limitation but only requires the ability to so perform. *In re Hutchinson*, 69 USPQ 138. In regard to claim 2, the material includes a first material (material for sheaths 14, 16) and a second material (wiping sheet, item 26) coupled together to form an elongated cavity (col. 2, lines 40-48 and Fig. 1, 7 and 8). The amendment in claim 3 does not affect the rejection of record. In regard to claim 4, non-fibrous material falls within the teaching of Brown at col. 2, lines 43-46. In regard to claim 5, the material (material for either sheath 14 or 16) is a unitary piece of material (Fig. 1, 7 and 8). In regard to claim 6, the material is operable to absorb moisture because Brown teaches cloth, leather and synthetic fabric (materials that are operable to absorb moisture) as suitable materials for the material (col. 2, lines 40-48). In regard

Art Unit: 1772

to claim 7, the material of wiping sheet, item 26, of Brown has an oval shape (Fig. 9). In regard to claim 9, an eye irritant solution is substantially absent from the material (the material for either sheath 14 or 16, or the material of wiping sheet, item 26).

***Claim Rejections - 35 USC § 103***

8. The 35 U.S.C. 103 rejection of claim 8 made of record in paragraph 8 of the previous Office Action mailed May 3, 2005 has been repeated for the reasons previously made of record and for the following reasons that address the amendments in claims 1 and 8 in Amdt. A: Brown teaches the wipe as discussed above in regard to claim 1. While Brown fails to explicitly teach that the material (the material for either sheath 14 or 16, or the material of wiping sheet, item 26) has a maximum dimension of less than about two inches, Brown teaches that the wipe is for lenses and similar articles (col. 1, lines 14-16 and col. 2, lines 28-30) and Fig. 7 of Brown depicts the wipe being used on a pair of eyeglasses. Since Brown teaches that the wipe is to be used for wiping the lenses of eyeglasses, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have fabricated the wiping sheet, item 26, of Brown and the sheaths, items 14 and 16, of Brown such that they are sized such that they have a maximum dimension that is approximately equal to the maximum dimension of the lens that the wipe is intended to be used on, as is shown in Fig. 7 of Brown, in order to make efficient use of the material required for the wiping sheet, item 26, and the sheaths, items 14 and 16, of Brown, depending on the particular lens which is to be wiped by the wipe of Brown.

9. The 35 U.S.C. 103 rejection of claims 10 and 11 made of record in paragraph 9 of the previous Office Action mailed May 3, 2005 has been repeated for the reasons previously made of record and for the reasons provided above that address the amendments in claim 1 Amdt. A: the

Art Unit: 1772

wipe that “include[s]” a non-eye irritating cleaning solution proposed in paragraph 9 of the previous Office Action mailed May 3, 2005 is a material that is at least partially saturated with a non-eye irritating solution, and the wipe that “include[s]” an eye makeup remover proposed in paragraph 9 of the previous Office Action mailed May 3, 2005 is a material that is at least partially saturated with a solution operable to remove makeup.

***Response to Arguments***

10. Applicant’s arguments presented on pages 5-6 of Amdt. A regarding the 35 U.S.C. 102 rejection of claims 1-7 and 9 have been fully considered but are not persuasive.

Applicant argues that Brown does not teach a “material forming one cavity with one opening configured to receive a finger” as claimed because Brown teaches two sheaths and therefore two openings, but the recitation “comprising: material forming one cavity with one opening” of claim 1 does not limit the wipe to having solely one opening. Applicant argues that claim 1 is “not directed to cleaning an inanimate object”, but there is no structure or composition recited in claim 1 that precludes use of the wipe as a wipe for inanimate objects, and there is no teaching in Brown that precludes use of the wipe of Brown as an eye wipe. The number of sides to be cleaned of whatever object to be cleaned is irrelevant to article claims 1-11. Applicant argues that a “flat shape is not suitable to fit near an eye duct due to a curvature in the shape of a face near the eye duct” is not supported, and regardless, the tip of either end of the wipe of Brown when a finger is inserted in each of the sheaths of Brown is not flat (Fig. 7 and 8). Applicant’s statement that the structure of Brown is “cumbersome and therefore not suitable to use near an eye” is unsupported and irrelevant: the difficulty of use of an article is not relevant in rebuttal of a rejection under 35 U.S.C. 102. Brown plainly teaches the claimed structure.

Art Unit: 1772

11. Applicant's arguments presented on page 7 of Amdt. A regarding the 35 U.S.C. 103 rejections of claims 8, 10 and 11 have been fully considered but are not persuasive. Applicant's arguments depend entirely upon Applicant's arguments regarding the 35 U.S.C. 102 rejection of claim 1, which have been addressed above.

***Conclusion***

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter B. Aughenbaugh whose telephone number is 571-272-1488. While the examiner sets his work schedule under the Increased Flexitime Policy, he can normally be reached on Monday-Friday from 8:45am to 5:15pm.

Art Unit: 1772


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is to 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Walter B. Aughenbaugh

12/19/05

WBA

  
HAROLD PYON  
SUPERVISORY PATENT EXAMINER

1772

12/19/05